IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 598 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAMDAS MAGHAMAL

Versus

PAHILRAJRAI MAGHAMAL

Appearance:

1. First Appeal No. 598 of 1986

MR VC DESAI for Petitioner No. 1

MR RAMESH K SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 10/03/2004

ORAL JUDGEMENT

The appellant was the defendant in Regular Civil Suit No.28 of 1981 in the Court of District Judge, Bhavnagar. The respondent - plaintiff had filed the said suit alleging that the defendant had infringed his registered trademark "Raj Tilak" and had been passing off his goods as those of the plaintiff by imitating the mark labels Ex.A, B & C in respect of Agarbattis. The respondent had also prayed for permanent injunction. The appellant's main contention was that the trademark "Raj Tilak" was of the ownership of GP Brothers which had been

thrown in the common stock of undivided family property of Meghamal Hansraj family (Karta Pahilraj Maghamal) and the members of the said family had been using the said trademark till then and, hence, the plaintiff had no right to bring the suit against the defendant. It was his contention that as a member of the joint family, he was also entitled to use the marks and labels in question.

2. The Learned Trial Judge raised the following issues for his decision:-

1. Does the plaintiff prove that it is sole owner, user and registered proprietor of the Trade Mark "Raj Tilak"?

2. Does the plaintiff prove that it is using registered trademark and labels and cartoons as per Ex.A,B and C for its Phoolbahar Gayatri Batti Rajtilak Gulab Batti and Rajtilak Kevada Batti and stand registered under No.A-29886/80, A-29873/80, A-31249/81 respectively under Indian Copy Right Act?

3. Does the plaintiff prove that it has acquired reputation for the said brand names?

4. Does the plaintiff prove that the defendant is passing of his brand and Battis Ex.E,F and G for Ex.A,B & C by colorable imitation?

5. Does the plaintiff prove that such act on the part of the defendant has caused it damages?

6. Does the defendant prove that trademark "Raj Tilak" was registered in Bombay in 1961 as No.204938 and Copy Right of the same was registered under Indian Copy Right Act in Delhi in 1980-81 and he and the plaintiff are the owners thereof?

7. Does the defendant prove that the plaintiff has no right to bring the present suit as contended in para 13 of W.S.?

8. Is the plaintiff entitled to all or any of the reliefs claimed in para (16) of the plaint?

3. After recording the evidence, oral and documentary, adduced by the parties, the Learned Judge recorded the following findings on the said issues:-

1. In affirmative.
2. In affirmative.
3. In affirmative.
4. In affirmative so far as Ex.E & F i.e. Phoolbahar Gayatribatti and Rajtilak Gulab batti are concerned. In negative so far as Vijay Tilak Kevada batti is concerned.
5. In affirmative.
6. In affirmative, First part in affirmative. The defendant has failed to prove that he is the owner of trademark alongwith plaintiff.
7. In negative.
8. In affirmative.

4. In view of the said findings, the Learned Judge by his judgement and order dated 17.4.1985 decreed the suit partly in favor of the respondent-plaintiff.

5. The appellant has, therefore, filed this appeal challenging the said judgement, order and decree.

6. The Learned Advocate for the appellant took me through the judgment and also the relevant parts of the evidence on record. However, the findings recorded by the Learned Judge, namely that the respondent was the sole owner, user and registered proprietor of the trademark Rajtilak, that he had been using the registered trademark, labels and cartoons as per Annexure A, B and C for its Phoolbahar Gayatri Batti Rajtilak Gulab Batti and Rajtilak Kevada Batti, that the respondent had acquired reputation for the said brand names, that the appellant had been passing off his Battis Ex.E,F and G for Ex.A, B & C by colorable imitation and that the plaintiff had right to bring the suit, are findings of fact which are based on appreciation of the relevant evidence on record. The Learned Advocate for the appellant has not been able to show how the findings are in any way erroneous so as to warrant interference. There is no substance in the appeal and the same is dismissed. There shall be no order as to costs.

(M.C.Patel, J)
jitu